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Criminal Procedure--Murder--Reversal of Judgment Because of Court's Statement that Conspiracy Existed (People v. Jackson, 291 N.Y. 451 (1943))

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evidence.¹⁰ It refused to recognize a third party's right to set up such evidence,¹¹ yet the dissenting opinion makes it clear that New York has previously sustained such attack by persons who were not directly connected with the action.¹² It is believed that this controversial subject will continue to be the basis of much court litigation. No sooner had the Court of Appeals rendered its opinion when, in a lower court in New York State, a similar problem arose. The lower court refused to follow this decision but preferred to abide by the old weight of authority, declaring that the Nevada decree was invalid upon the contention that the domicile established was not *bona fide* and that therefore it was never within the jurisdiction of Nevada to hand down such a decree.¹³

J. P.

CRIMINAL PROCEDURE—MURDER—REVERSAL OF JUDGMENT BECAUSE OF COURT'S STATEMENT THAT CONSPIRACY EXISTED.—Defendants Munford, Jackson and Greene were convicted of murder in the first degree. The jury found that the former inflicted the fatal stab and that the latter two were fellow conspirators. The crime was the result of an argument over certain gambling activities which occurred at the victim's gambling house. Munford, in the company of Jackson and Greene, arrived at the deceased's apartment and within a short while, a quarrel ensued. The victim, Eason, rushed from the room and fled a few blocks with the three defendants following him. Here there was conflicting testimony as to whether the stab was already inflicted when the deceased left, or whether the crime was actually consummated at a distant spot after the three defendants had conspired to kill him. Thus, whether there was a conspiracy, became one of the most important questions of fact which the jury had to determine. Upon this point the testimony of the prosecution's witness, Bey, was vital. After repeatedly denying that he recognized the three defendants, positively identified them as three men whom he had seen leave the victim's apartment and pursue him. When asked to repeat any conversation he had overheard, defendants objected unless he could name the specific defendant who had spoken. The court overruled this objection "on the ground there is a continuing conspiracy at that particular time." The prosecution, relying on circumstantial evidence, tried to show that the crime was com-

¹⁰ *Lefferts v. Lefferts*, 263 N. Y. 131, 188 N. E. 279 (1933); *Matter of Kimball*, 155 N. Y. 62, 49 N. E. 331 (1898); *Cross v. Cross*, 108 N. Y. 628, 15 N. E. 333 (1888).

¹¹ The validity of a judgment could not be challenged after it became final and the issue decided therein could not be litigated again between the parties to the action or their privies. See *Chicot County Drainage District v. Boston State Bank*, 308 U. S. 371, 84 L. ed. 329 (1939).

¹² *Andrews v. Andrews*, 188 U. S. 14, 47 L. ed. 366 (1902). The decree was attacked by the second wife, a third party.

¹³ *Ammermuller v. Ammermuller*, 181 Misc. 98 (1943), decided by Supreme Court, Special Term, N. Y. County, Dec. 13, 1943.

mitted several blocks away, by producing an unidentified knife that was found at that location. *Held*, reversed. The jury's finding that the three defendants were members of a conspiracy, was influenced by the court's statement that there was a continuing conspiracy; the language thus used was prejudicial to the defendant's substantial rights. The mere fact that co-defendants accompanied Munford from the apartment, was not enough to establish beyond a reasonable doubt that they aided and abetted in the killing.¹ Also, the finding of an unidentified knife at a particular place did not authorize an inference that the crime was committed nearby. The inference was based upon conjecture and not upon known or proven facts which are the essentials of circumstantial evidence.² *People v. Jackson*, 291 N. Y. 451, 52 N. E. (2d) 945 (1943).

The most significant portion of this decision is that which relates to the court's remarks on a question of fact which should have been reserved for the jury. It is well settled that no court has the authority to affect the fair and impartial deliberations of the jury. Whether certain remarks uttered by the court may be considered prejudicial to the defendant's rights is not a novel problem. As early as 1905 New York had held that statements made by a trial court may be open to criticism, but that they are not error, unless they may have affected the result of the trial.³ So, although a court went so far as to indicate a personal disbelief of accused's testimony, and a conjecture of accused's guilt, it was held not to be prejudicial error where the evidence left no doubt as to defendant's guilt and did not affect the result of the trial.⁴ In a later decision, however, the opposite result was reached when it was shown that sarcastic remarks by the court did operate to the detriment of the defendant.⁵ Very recently it was held that where the trial court admonished defense counsel for his persistence, it did not disclose prejudicial bias, since no opinion as to the guilt of accused was expressed.⁶ Following these decisions, the court, in the principal case, came to the conclusion that where the trial judge, upon admitting certain evidence, stated that he did so in view of the conspiracy between the defendants, such statement was deemed prejudicial to the defendants on the ground that determination of the presence of a conspiracy was in the province of the jury.

L. R.

¹ *People v. Weiss*, 290 N. Y. 160, 48 N. E. (2d) 306 (1943); *English v. Commonwealth*, 240 Ky. 446, 42 S. W. (2d) 706 (1931).

² "Every reasonable hypothesis should be explored where circumstantial evidence is relied on to prove slayer's guilt." *Flewellen v. State*, 113 Tex. Cr. 22, 18 S. W. (2d) 1087 (1929).

³ *People v. Estell*, 106 App. Div. 516, 94 N. Y. Supp. 748 (1905).

⁴ *People v. Armellino*, 196 App. Div. 950, 188 N. Y. Supp. 158 (1921); accord, *People v. De Maio*, 243 N. Y. 588, 154 N. E. 616 (1927); *People v. Froelich*, 185 N. Y. 615, 78 N. E. 1102 (1906).

⁵ *People v. Robins*, 242 App. Div. 516, 275 N. Y. Supp. 940 (1935).

⁶ *United States v. Liss*, 137 F. (2d) 995 (1943).